

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PATRICK FITZGERALD CHIOINO,

No. C 06-932 MHP (pr)

Petitioner,

ORDER UPON REMAND

v.

SCOTT M. KERNAN, warden,

Respondent.

Patrick Fitzgerald Chioino filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 challenging his 2004 conviction in Monterey County Superior Court. This court granted the petition on his claim that his sentence violated the Apprendi rule and ordered that he be resentenced to 18 years in prison. Respondent appealed. The Ninth Circuit reversed and remanded the case to this court with directions for this court "to amend its order to require that the matter be remanded to the state trial court for resentencing." Chioino v. Kernan, 581 F.3d 1182, 1186 (9th Cir. 2009). The Ninth Circuit's mandate issued recently. Accordingly, the court's order granting petition for writ of habeas corpus is now amended to (a) delete the text beginning at page 11:24 (starting with the beginning of the sentence that begins with the phrase "The record only supports") through the end of the paragraph at page 12:4, and (b) replace that text with the sentence: "Chioino must be resentenced."

1 This matter is remanded to the state court for resentencing consistent with the decision
2 of the United States Court of Appeals for the Ninth Circuit.

3 The clerk shall mail a copy of this order to the Monterey County Public Defender at
4 111 W. Alisal Street, Salinas, CA 93901.

5 IT IS SO ORDERED.

6 DATED: November 6, 2009


Marilyn Hall Patel
United States District Judge